THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4728 of 2001

Dated: 29-06-2007

Between:

G.Ramachandar Rao.

..... PETITIONER

AND

The Government of Andhra Pradesh, rep. by its Secretary,
Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4728 of 2001

ORDER:

The petitioner filed instant writ petition seeking a writ of Mandamus declaring the orders of first respondent, namely, the Government of Andhra Pradesh, in G.O.Ms.No.91 dated 14.10.2000, confirming the order dated 04.12.1998 passed by second respondent, who confirmed the order dated 25.06.1988 passed by the original authority, namely, the Special Deputy Collector (Tribal Welfare), Bhadrachalam, who ordered ejectment of the petitioner from the land admeasuring Acs.3.12 guntas in survey No.554/33 situated at Singireddipalli Village, Pinapaka Mandal, Khammam District (hereafter called, subject land), as illegal and arbitrary.

It is the case of the petitioner that he purchased subject land under sada sale deed dated 05.07.1962, got his name mutated in the revenue records for the year 1966-1967 and that he is continuously in possession of the same from that time. Third respondent initiated action under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation No.I of 1959, for brevity) as amended by Regulation No.I of 1970. In Case No.863/88/PNK by order dated 25.06.1988, the petitioner was directed to be ejected. The petitioner then preferred an appeal under Section 3(3) of Regulation No.I of 1959, being C.M.A.No.127 of 1988, before second respondent. After considering the documents produced by the petitioner, second respondent came to the conclusion that the transaction pursuant to which the petitioner was found in possession was void under Section 3(1)(a) read with Section 3(2)(a) of Regulation No.I of 1959 and accordingly ordered restoration of possession to the tribal. The petitioner preferred a revision under Section 6 of Regulation No.I of 1959 before the Government, who dismissed the same.

The learned counsel for the petitioner submits that as held by the Full Bench of this Court in **G.Narsa Reddy v. Collector, Adilabad Dist.**[1] and the Supreme Court in **Dy. Collector v. S.Venkata Ramanaiah**[2], the transaction of transfer of land from one non-tribal to another non-tribal prior to coming into force of Regulation No.I of 1959 as amended by Regulation No.I of 1970 is not hit by the provisions of Regulation No.I of 1959 and therefore, action initiated by third respondent is wholly without jurisdiction. He points out that Regulation No.I of 1959 was enforced in Telangana area with effect from 01.12.1963. Secondly he submits that the petitioner had no opportunity before the original authority, who passed *ex* parte orders. The petitioner, while filing the appeal before second respondent, has produced copies of sada sale deed as well as Pahanies but the appellate authority rejected the documents on the grounds, which are not sustainable.

The learned Government Pleader for Social Welfare has taken this Court through the counter-affidavit filed by second respondent and submits that the petitioner relied on the sada sale deed which is not even executed on stamp papers and in the absence of any requirement of registration, the same cannot be relied on. He also submits that the revenue records produced by the petitioner were found to be not in support of his (petitioner's) case and therefore such documents cannot be gone into.

The submission that third respondent has no jurisdiction with regard to the transactions took place prior to 01.12.1963 though supported by a ratio laid down by the Full Bench in **G.Narsa Reddy**'s case as well as **S.Venkata Ramanaiah**'s case supra, the principle cannot be pressed into service in all cases. In a case where the alleged sale under which the petitioner purchased the land is not valid in the eye of law for the reason that it was not by way of a registered document as required under Section 54 of the Transfer of Property Act, 1882, or such sale was not registered as required under Section 17(1)(b) of the Registration Act, 1908, the burden would lie on the petitioner to prove that the sale transaction was valid and that he was in possession of the property prior to 01.12.1963 in Telangana area. Indeed Section 3(1)(b) of Regulation No.I of 1959 adumbrates a presumption that the immovable property situated in agency tracts and in the possession of a non-tribal shall be presumed to have been acquired by that person or his predecessor through a transfer made to him by a member of a scheduled tribe. In this case by producing the sada sale deed which is not even made on stamp papers could not have been said to have discharged the burden. Secondly the petitioner produced the land revenue receipts before the appellate authority which were found to be not relevant for the crucial period. Therefore, the appellate authority drew an inference that the petitioner came into possession after 1970 i.e., after coming into force of Regulation No.I of 1970. Though the petitioner alleges that he has also produced the Pahanies for 1969-1970 and 1970-1971, the same is denied in the counter-affidavit. The matter was considered by the Government in the revision in the following manner.

> The case has come up for hearing on 24.7.2000. The Counsel for the Petitioner has appeared and given his arguments in line with the Revision Petition filed by him. Government have examined the case records and material papers. The appellant purchased the land during the year 1962 through a sada sale deed which is not

> acceptable. He could not produce any valid documentary evidence that he is in possession over the Petition Scheduled Land prior to Regulation 1/70 came into force.
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> The Agent to Government have taken into consideration all the records and material papers while passing orders. The transaction is hit by Regulation 1 of 1959 read with Regulation 1/70. Therefore Government see no reason to interfere with the orders passed by the Agent to Government, Khammam District in CMA No.127/88, dt.4.12.1998 in confirming the order of the Lower Court. Accordingly, the Revision Petition is dismissed and the orders of the Lower Courts are confirmed. The counsel for the Petitioner is requested to inform his client accordingly.

The learned counsel for the petitioner criticizes the order of the Government contending that no proper reasons are given. This Court cannot accept the same. The revisional authority confirmed the order of the appellate authority and while doing so, all the relevant facts were taken into consideration. Therefore, there were reasons for rejecting the revision. The writ petition is devoid of merits and the same is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

29th June, 2007
ghn

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[1] AIR 1982 AP 1 (FB)

[2] AIR 1996 SC 224